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ASSOCIATION

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February 20, 2003

Federal Communications Commission
Office of Secretary

Office of the Secretary
Attention: Secretary Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

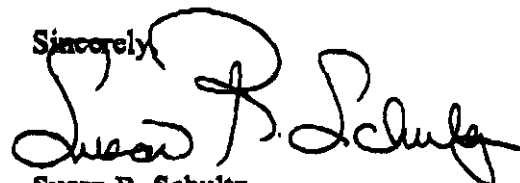
Re: "Motion to Accept Filing as Timely Filed"

Dear Secretary Dortch:

The Competitive Telecommunications Association ("CompTel") respectfully submits this letter as a motion to accept the attached CompTel Reply Comments in response to the FCC's *Notice of Proposed Rulemaking (NPRM) on Possible Reform of International Settlements Policy (ISP)/International Simple Resale (ISR)* (DA No. 02-3314) (IB Docket Nos. 96-261, 02-324) as timely filed. The tumultuous weather and blizzard conditions from February 15th to the late evening of the 19th stranded traveling staff and prevented their return to the Washington, D.C. area, thus precluding CompTel and its Members from finalizing these Reply Comments. Accordingly, CompTel filed the above-mentioned Reply Comments in the Electronic Comment Filing System (ECFS) on February 20th, one day past the deadline of February 19th.

On behalf of CompTel and its Member companies, thank you for your sincere consideration and understanding in the above-mentioned matter.

Sincerely,



Susan R. Schultz
Policy Associate & Paralegal

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	IB Docket No .02-324
International Settlements Policy Reform)	
International Settlement Rates)	IB Docket 96-261
)	

**REPLY COMMENTS OF THE COMPETITIVE
TELECOMMUNICATIONS ASSOCIATION (COMPTEL)**

The Competitive Telecommunications Association ("CompTel") hereby submits these reply comments concerning the Commission's proposals and the responsive comments of several parties to reform the International Settlements Policy ("ISP") and settlement rate benchmark policies, and concerning recent foreign actions to raise international termination rates.¹ In these reply comments, CompTel supports proposals to remove specific ISP requirements from U.S. international routes immediately after carriers achieve benchmark-compliant rates, while maintaining important Commission safeguards on all routes to prevent anti-competitive conduct that would harm U.S. consumers, such as unjustified rate increases and whipsaws.

In recent years U.S. consumers have benefited from declining U.S. international rates, resulting from a combination of increased global competition and also Commission policies requiring U.S. carriers to negotiate more cost-based international termination rates. Several parties confirmed that increased competition and alternative routing

¹ *International Settlements Policy Reform*, Notice of Proposed Rulemaking, IB Docket No. 02-324 (rel. Oct. 11, 2002) ("NPRM"); *Commission Extends Pleading Cycle in Rulemaking Proceeding On Possible Reform of the International Settlements Policy in View of Recent International Developments*, DA 02-3314 (rel. Dec. 2, 2002). Eighteen parties, including CompTel, filed initial comments in response to the NPRM.

mechanisms have successfully exerted downward pressure on the termination rates for many routes in both WTO and non-WTO countries; and where competitive pressure exists, the FCC should reduce ISP requirements and rely to a greater extent on market forces.² Indeed, the maintenance of an overly prescriptive ISP could inhibit competition, and thereby delay further reductions in termination rates.³ Parties also indicated, however, that monopoly carriers continue to control the foreign end in a majority of countries, and in such places any rate-reducing market forces may be weak or non-existent.⁴ Where foreign market forces are insufficient, there is a risk that trends towards cost-oriented rates may regress. Absent effective safeguards, foreign monopoly carriers could engage in unjustified increases in rates, whipsaws of U.S. carriers and other anti-competitive conduct.

To balance the evolving dynamics in the international telecommunications marketplace, CompTel supports two related proposals for reforming the ISP. First, the Commission should remove the ISP requirements of non-discriminatory rates, proportionate return, symmetrical settlement rates and filing of commercial agreements on all benchmark-compliant routes, for WTO and non-WTO member countries alike. Second, because achievement of benchmark-compliant rates could be transitory on some routes, where the Commission removes the above-mentioned ISP requirements it must still preserve its enforcement safeguards to prevent against abuse of market power by monopoly foreign carriers. As discussed below, specific critical safeguards include the

² See, e.g., AHCIET Comments at 4; C&W Comments at 3-7; Telecom Italia Comments at 4-5; Telefonica Comments at 4; Verizon Comments at 1-3; WorldCom Comments at 2.

³ See *Reform of the International Settlements Policy and Associated Filing Requirements*, 14 FCC Rcd. 7963, ¶1 (1999) (*ISP Reform Order*); C&W Comments at 4.

⁴ See, e.g., AT&T Comments at 18-21; C&W Comments at 12-13; Sprint Comments at 5-6, 14-16; Telecom Italia Comments at 13; WorldCom Comments at 8-12.

"no special concessions" rule, the Section 43.61 quarterly filing of traffic and revenue reports, the prohibition on anti-competitive conduct including unreasonable rate increases and whipsaws, and the maintenance of benchmark rates as settlement rate ceilings.

CompTel supports proposals to remove the specific ISP requirements of nondiscriminatory rates, proportionate return and symmetrical settlement rates immediately after any U.S. carrier files a benchmark-compliant rate negotiated with the dominant international carrier, whether in a WTO or non-WTO country. This simplified threshold for removing the ISP requirements upon the filing of a benchmark-compliant rate will still ensure that at least 50% of traffic will settle at or below that rate, because the filed rate is immediately available to all U.S. carriers as a ceiling rate. Moreover, by applying this ISP removal standard to any WTO or non-WTO country, carriers will be able to move to commercial agreements on non-WTO routes upon achieving benchmark rates. Without needing to additionally satisfy an "equivalency analysis" or bring rates 25% below benchmark. These changes will streamline the hurdles for pursuing commercial agreements in all markets, including the nearly 140 non-WTO markets. This would benefit U.S. consumers by exerting even greater downward pressure on settlement payments below the benchmark-compliant ceiling rate.

In addition to removing the aforementioned ISP requirements upon achieving benchmark-compliant rates, the Commission also should lift the related filing requirements under Section 43.51 and 64.1001.⁵ The public disclosure of commercial agreements can reduce incentives of parties to negotiate aggressively, thereby having a chilling effect on potential rate reductions. In a commercial environment deemed competitive by removal of ISP requirements, these filing requirements also are an

⁵ 47 C.F.R. §43.51; 47 C.F.R. §64.1001.

unnecessary administrative burden on carriers and the Commission, particularly because rates fluctuate more dynamically than they do under ISP arrangements.⁶ Moreover, on routes where the ISP requirements have been removed, the risk of anticompetitive behavior still can be detected either through a carrier-initiated enforcement request or through quarterly traffic and revenue reports.

Effective rate-constraining market forces are not in place on all benchmark-compliant routes,⁷ and therefore even where the Commission removes specific ISP requirements it must maintain existing safeguards to prevent against unjustified rate increases, whipsaws and other forms of anti-competitive conduct. The need for such safeguards has been demonstrated vividly in the past three months by the attempts of several foreign carriers and governments to require unreasonable increases on benchmark-compliant routes.⁸ One important safeguard that the Commission should preserve is the "no special concessions" rule, which does not apply to the terms and conditions on which traffic is settled (i.e., the commercial settlement agreements), but does prevent discrimination in other important areas such as private line provisioning, interconnection of international facilities and quality of service.⁹ Preservation of this rule will restrain foreign carriers with market power from engaging in anticompetitive misconduct. Another critical safeguard to maintain is the Section 43.61 quarterly traffic and revenue report requirement. These routine reports allow for timely monitoring of the

⁶ See WorldCom Comments at 13.

⁷ Several foreign monopoly carriers have agreed to benchmark-compliant rates, but absent competition, there is no assurance that the monopoly carrier will maintain the benchmark rate, or equally important, will continue to move rates towards cost-based levels.

⁸ AT&T Comments at 19-21; Sprint Comments at 5-6; WorldCom Comments at 8-11.

⁹ 47 C.F.R. § 63.14; *ISP Reform Order*, 14 FCC Rcd 7963, ¶¶84-86.

key statistical metrics that detect anticompetitive misconduct, and are a welcome and sensible safeguard where *ex ante* ISP restrictions have been removed.

Because the Commission's goal is to achieve cost-based rates,¹⁰ and not only to achieve benchmark compliance, the Commission also must maintain on all routes a prohibition on non cost-based increases or surcharges to a settlement rate except where such changes are shown to be in the public interest.¹¹ This rule will prevent foreign carriers and foreign governments from unilaterally increasing rates on benchmark-compliant routes, unless they have satisfied a burden of proof that there is a public interest justification to increase a rate from an existing commercially negotiated level. This safeguard should be applied through a carrier-initiated enforcement process, and therefore only requires Commission oversight and resource in the case-by-case instances when a U.S. carrier identifies an attempted settlement rate increase that it does not believe to be justified in the public interest.

Finally, consistent with our view that benchmark-compliance should be the threshold for removing specific ISP requirements, CompTel agrees with the views of many parties that the Commission must retain the safeguard of benchmarks as de minimis rate ceilings.¹² The benchmark policy is a critical tool for achieving the Commission's goal of cost-based rates. At a minimum, the benchmark rates serve as a bright-line test of acceptability, above which settlement agreement will be rejected, and below which the FCC should reward the foreign carrier by permitting it to negotiate commercial

¹⁰ *Id.* at ¶9.

¹¹ *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶¶16 & n.30 (1991); AT&T Comments at 5; WorldCom Comments at 11.

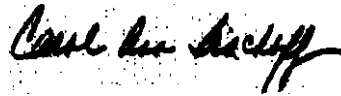
¹² AT&T Comments at 29; C&W Comments at 12; Telecom Italia Comments at 5; Verizon Comments at 7; WorldCom Comments at 15.

agreements with U.S. carriers outside of specific ISP requirements. CompTel therefore believes that benchmarks rates must be maintained.¹³

For the foregoing reasons, CompTel urges the Commission to remove ISP requirements from all benchmark-compliant routes and to maintain adequate safeguards on all routes to prevent anticompetitive conduct that could harm U.S. consumers.

Respectfully submitted,

By:



Carol Ann Bischoff
Executive Vice President
and General Counsel
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¹³ CompTel does not take a position as to whether the Commission should undertake an effort to establish even lower benchmarks that are closer to cost-based rates. See e.g., AT&T Comments at 27-29; Sprint Comments at 7-11; Telecom Italia Comments at 5.



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From:

Susan Schultz CompTel

Message:

late Reply Comments

WHERE THE BEST OF INDUSTRY MEETS

Annual Convention and
Trade Exposition

February 23-26, 2003

Henry B. Gonzalez Convention Center
San Antonio, TX

Summer Business Conference and
Trade Exposition

June 15-18, 2003

San Francisco Hilton
San Francisco, CA

Fall Business Conference and
Trade Exposition

October 12-15, 2003

Walt Disney World, Swan & Dolphin
Orlando, FL

